IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GGI WORLDWIDE, INC.	)	
	)	
Plaintiff/Counterlcaim Defendant,	)	
	)	
v.	)	Cause No. 4:10cv01118
	)	
PATRICIA LUTS, et al.	)	
	)	
Defendants/Counterclaim Plaintiffs.	)	

JOINT STIPULATED PROTECTIVE ORDER

To facilitate discovery and protect, pursuant to Federal Rule of Civil Procedure 26(c), the confidentiality of and rights to information and documents disclosed in connection with this litigation, the parties hereby stipulate to the following:

1. ***Applicability of This Protective Order.*** All information, things, and documents filed with the Court or produced by any party or non-party in discovery in this action shall be governed by this Protective Order.

2. ***Use of Information Produced Pursuant to This Order.*** Information and material produced or exchanged in discovery in this case and designated by a party or non-party as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to the terms of this Protective Order (hereafter collectively referred to as "Confidential Material") shall not be disclosed to or made available to any person or entity except as authorized under this Protective Order. Confidential Material shall be used, by the party or parties to whom the information is produced, solely for the purpose of litigating this case, or any other case involving these parties, including appeals. Such information and material shall not be used or disclosed to any other person or entity for any other use or purpose, unless otherwise agreed in writing by the producing party or so ordered by a court of competent jurisdiction. For purposes of this Protective Order, the party or non-party designating information or material as Confidential Material is defined as the "Designating Party." Nothing contained in this Protective Order shall

affect the right of a Designating Party to disclose or use its own Confidential Material for any purpose.

3. ***Confidential Information Designation.*** A party or non-party may designate as "CONFIDENTIAL" any document, material, item, picture, video, deposition testimony, or information that is filed with the Court or produced in discovery in this action, and is or contains confidential information of the Designating Party, which is not publicly available.

4. ***Confidential – Attorneys' Eyes Only Designation.*** A party or non-party may designate as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" any document, material, item, deposition testimony, or information that is filed with the Court or produced in discovery in this action, and is or contains confidential information of the Designating Party, which is not publicly available and the disclosure of which, to persons other than those described in Section 7 below, the Designating Party in good faith believes would be likely to harm the Designating Party's competitive position. All parties will use reasonable care to limit their designations of "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to those documents that they reasonably believe fall into this category.

5. ***Excluded Information.*** Notwithstanding the foregoing, Confidential Material does not include information that: (a) is known to Recipient at the time of disclosure as evidenced by Recipient's pre-existing written or electronic records or other tangible proof, provided that the information is not known by Recipient (after due inquiry) to be subject to another confidentiality agreement with or other obligation of secrecy to the Disclosing Party or another party; (b) is or becomes part of the public domain through no wrongful act or omission of Recipient, (c) has been received by Recipient from a third party authorized to make the disclosure without restriction, (d) has been approved in writing by an authorized representative of Disclosing Party for release, or (e) is demonstrated by reasonable proof to have been independently developed without benefit of the Confidential Information.

6. ***Designating and Marking Confidential Material.*** Confidential Material shall be

designated and marked as follows:

a. A document is to be designated as Confidential Material by stamping or writing on it one of the following legends, or an equivalent thereof: "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." Whichever legend is used shall be placed on the first page of the document and on each page that the Designating Party claims to contain Confidential Material.

b. Information or material produced in a magnetic or optically recorded medium (such as a CD, flash drive, or tape) is to be designated as Confidential Material by marking or labeling the medium container with one of the legends specified in subsection 5(a) above. If any person or entity who receives such a designated magnetic or optical medium prints or otherwise transfers to another medium any of the information contained on the magnetic or optical medium, any resulting document or other medium shall be marked by that person or entity as Confidential Material in accordance with subsection 5(a) above or this subsection 5(b).

c. A physical exhibit is to be designated as Confidential Material by affixing to it a label with one of the legends specified in section 5(a) above.

d. A discovery response is to be designated as Confidential Material by placing, on the first page of the set of responses and on each page that contains information that the Designating Party claims to be Confidential Material, one of the legends specified in subsection 5(a) above.

e. The relevant confidential portions of a deposition transcript (including exhibits) are to be designated as Confidential Material (i) by making a statement to that effect on the record, during the deposition, or (ii) by sending to all other parties, the court reporter for the deposition, and all other persons known to the Designating Party to have received a copy of the deposition transcript, within ten (10) days after counsel for the Designating Party receives the deposition transcript, a letter or other written notice sent via electronic mail or other means, designating the relevant portions, of the transcript as "CONFIDENTIAL" or "CONFIDENTIAL

– ATTORNEYS' EYES ONLY." The letter or other notice shall identify the appropriate level of confidentiality, and identify the pages and lines, and/or exhibits, to be Confidential Material. During the time provided under this paragraph to designate relevant portions of the transcript as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," all parties or other persons known to the Designating Party to have received a copy of the deposition transcript shall treat such information as "CONFIDENTIAL – ATTORNEYS' EYES ONLY." Each copy of the transcript, and portions thereof, so designated shall be marked, by the person receiving the letter or other notice, with the legend specified in subparagraph 5(a) above indicating the level of confidentiality claimed by the Designating Party and shall be governed by the terms of this Protective Order.

If a portion of a deposition is designated on the record, during the deposition, as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," the deposition shall continue, and if any persons not approved for access to Confidential Material under this Protective Order are attending the deposition, they shall leave. The court reporter and/or videographer shall separately bind any portion of the transcript of the deposition or hearing that has been designated to contain Confidential Material. Copies of the separately bound portions of the transcript containing Confidential Material may be provided only to persons permitted by the other provisions of this Protective Order to receive such Confidential Material. When any such separately bound portion of the transcript is provided by the court reporter and/or videographer, it shall be provided in a separate, sealed envelope.

The Parties shall not be permitted to discuss or disclose the contents of the deposition until such time for designation has occurred.

7. ***Inadvertent Misdesignation.*** A Designating Party that inadvertently fails to mark an item as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or marks an item with an incorrect designation of confidentiality at the time of the production shall have five days after learning of the inadvertent failure or mistake to correct its failure or mistake. The

correction shall be made in writing, may be sent by electronic mail or other means, and shall be accompanied by substitute copies of each item, appropriately marked as Confidential Material. Within three days of receipt of the substitute copies, the receiving party shall return the previously unmarked, or incorrectly marked, items and all copies thereof.

8. ***Disclosure of "Confidential – Attorneys' Eyes Only" Materials.*** Information and material designated as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" may be disclosed only to the following persons, unless the Designating Party first otherwise agrees in writing or the Court first otherwise orders:

a. Outside counsel for the parties to this litigation, including necessary secretarial, clerical, and litigation support or copy service personnel assisting such counsel;

b. Consultants or expert witnesses performing services in connection with the prosecution or defense of this litigation, provided that each such person is not an officer, director, or employee of any party, and provided that each such person executes a copy of the Consent attached to this Order. Counsel disclosing Confidential Material to consultants or expert witnesses pursuant to this section shall provide a copy of each executed Consent to opposing counsel.

The party wishing to make a disclosure to an outside consultant or expert witness pursuant to subsection 7(b) above shall identify that person in writing, sent via electronic mail or other means, to all other parties and shall provide a copy of that person's résumé describing all relevant employment, at least five days prior to the disclosure of any Confidential Material to that person. A party (such party is defined as the "Objecting Party" for purposes of this section) has three days from the date of receipt of identification of a consultant or expert witness to send written notice of its objection to disclosure and the grounds for such objection to the party intending to disclose Confidential Material. If no objection is made within three days, then the disclosure may be made.

Upon the making of such an objection, the Objecting Party then shall have three days from sending the notice of its objection in which to challenge, by filing the appropriate motion with the Court, the disclosure of the Confidential Material to the outside consultant or expert witness. If the Objecting Party does not file the appropriate motion with the Court within that time, or within any additional time within which to move as may be granted by the Court or agreed to by stipulation of the parties, the Objecting Party waives its right to challenge the disclosure of Confidential Material to the identified outside consultant or expert, and the Confidential Material may then be disclosed to the identified outside consultant or expert witness. An identified outside consultant or expert witness shall not be provided any Confidential Material while a timely-filed objection or motion challenging such consultant or expert is pending.

The identification of any non-testifying consultant pursuant to this section 7 shall not waive or detract from any work product protection that would otherwise apply. Nothing contained in this paragraph shall act as a waiver of the work product doctrine that applies to consulting experts and the consulting experts employed by all parties in this case shall not be subject to subpoenas for documents or depositions, unless the party employing such expert shall timely designate him or her as a testifying expert in this case;

c. The Court, Court personnel and court reporters;

d. Non-party deposition witnesses, provided that at least three days before the deposition, the party wishing to show the witness the Confidential Material notifies the Designating Party in writing, sent via electronic mail or other means, of its intent to do so, with a specific listing of the Confidential Material to be shown, and the Designating Party fails to provide, within three days of receipt of the notice, written objection to this use of Confidential Material. If a timely written objection is provided, the Confidential Information listed in the written objection shall not be shown to the witness unless and until the party wishing to show that Confidential Material to the witness moves for and obtains appropriate relief from the Court. Non-party deposition witnesses being shown Confidential Material must sign the Consent

Form annexed to this Order before being shown the Confidential Material. Counsel defending the deponent to which Confidential Information is disclosed during deposition shall provide to counsel for the Designating Party, prior to the start of the deposition, a copy of the executed Consent Form

9. ***Disclosure of Confidential Materials.*** Materials designated as "CONFIDENTIAL" may be revealed to any of the categories of persons designated in section 7 above and any representatives who are employees or agents of any named party to the litigation, provided that each designated representative executes, before receiving the disclosure, a copy of the Consent Form attached to this Order.

10. ***Use of Confidential Material by Designating Party.*** Nothing in this Protective Order limits a party's ability to show materials which that party has designated as "CONFIDENTIAL — ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" to whomever the Designating Party may deem appropriate. Further, nothing in this Protective Order limits a party's ability to show materials designated by another party as "CONFIDENTIAL — ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" to the party that designated the materials as "CONFIDENTIAL — ATTORNEYS' EYES ONLY" or "CONFIDENTIAL", including any present officer, director, employee, or representative thereof.

11. ***Jurisdiction.*** Each person receiving Confidential Material under the terms of this Protective Order hereby agrees to subject himself or herself to the jurisdiction of this Court for purposes of any proceedings relating to the performance under, compliance with, or violation of this Protective Order.

12. ***Protecting Confidential Materials.*** Each person who receives any Confidential Material shall exercise due and proper care, in connection with the storage, custody, use, and dissemination of such material, to avoid any intentional or inadvertent disclosure to persons to whom disclosure is not permitted under this Protective Order.

13. ***Challenging Designation of Materials as Confidential.*** A party may challenge

the designation of Confidential Material only as follows:

a. If a party believes that material designated by another party as "CONFIDENTIAL" or "CONFIDENTIAL — ATTORNEYS' EYES ONLY" has not been properly so designated or should be reclassified or revealed to an individual not otherwise authorized to have access to such material under the terms of this Protective Order, that party (defined as the "Challenging Party" for purposes of this section) shall provide to the Designating Party written notice of this disagreement, sent via electronic mail or other means. The parties shall then attempt in good faith to resolve such dispute informally.

b. If the parties cannot resolve their dispute informally, the Challenging Party may request appropriate relief from the Court. The Designating Party bears the burden to establish that the contested material is confidential and is entitled to the level of confidentiality selected by the Designating Party. The material involved shall be treated according to its original designation during the pendency of the challenge. Should the designation be challenged in Court, the successful party shall be entitled to its reasonable attorneys fees (*e.g.* in the event of a successful challenge, the challenging party shall be entitled to its reasonable attorneys fees in bringing the challenge).

14. ***Submitting Confidential Materials to the Court.*** Confidential Material may be submitted to the Court only as follows:

a. Where a party seeks to submit to the Court documents which have been designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" by another party, the submitting party shall bring a motion to file such documents under seal according to the procedures set forth in Local Rule 13.05 and Section IV of the Eastern District of Missouri Administrative Proceedings Manual, and shall lodge the documents containing the confidential information in accordance those provisions. Where a party seeks to submit its own documents to the Court which have been designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY", the submitting party may, in its discretion, bring a motion to file such documents under seal according to the procedures set forth in Local Rule 13.05 and Section IV of the Eastern District of Missouri Administrative Proceedings Manual and lodge the documents containing the CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY material in accordance those provisions. Where a submitting party intentionally declines to seek an order sealing documents it submits to the Court containing its own CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS' EYES ONLY material, the submitted material will lose its status as CONFIDENTIAL or CONFIDENTIAL – ATTORNEY'S EYES ONLY material under this Protective Order.

15. ***Information Protected by Privilege, Work Product, or Other Doctrine.*** The production of any document governed by this Stipulation and Order shall be without prejudice to any claim by the producing party or non-party that any such document, or information contained in such document, is privileged or work product within the meaning of Fed. R. Civ. P. 26, and no party or non-party shall be held to have waived any of its privilege or work-product rights under Fed. R. Civ. P. 26 by such production. If a disclosing party discovers that privileged or work-product protected materials were inadvertently disclosed, that party must within 5 days of learning of the inadvertent disclosure, inform each party to which the documents were produced in writing, and sent via electronic mail or other means, that such documents were inadvertently produced and that the disclosing party is not waiving the privilege or work-product protection on those materials. Each such receiving party shall then take reasonable steps to ensure that all copies of those documents are returned promptly to the producing party. If data or information has been extracted or copied from a document that is thus subsequently returned, that information and/or data shall be expunged and not used. To the extent, however, that, before being notified of the inadvertent production, the receiving party has in good faith used such information and/or data in documents filed with the Court or at depositions, the receiving party shall have no obligation to expunge such information and/or data from, or otherwise to alter, any such document filed with the Court or the transcript of any such deposition.

16. ***Conclusion of Litigation.*** All provisions of this Protective Order restricting the communication or use of Confidential Material shall continue to be binding after the conclusion of this action, unless otherwise agreed by all the parties or ordered by the Court. Upon conclusion of the litigation, including the running of any time to appeal or to move for relief under Fed. R. Civ. P. 60(B)(1)-(3), a party in possession of Confidential Material, other than that which is contained in pleadings, correspondence, and deposition transcripts, shall either (a) return such documents, no later than 30 days after conclusion of this action, to counsel for the party or non-party who provided such information, or, upon consent of the Designating Party, (b) destroy the documents within that time period and certify in writing within that time period that the documents have been destroyed. Provided, however, that counsel for the parties may retain one copy of any document produced in this litigation, including but not limited to pleadings, for archival purposes and for use in any subsequent litigation involving these parties.

17. ***Use of Confidential Material During Court Proceedings.*** If any Confidential Material is used in any Court pretrial proceeding in this litigation (including, but not limited to, conferences, oral arguments, and hearings), the Confidential Material shall not lose its status as Confidential Material through such use so long as the District Court Judge agrees. The parties shall take all steps reasonably necessary to protect the confidentiality of the Confidential Material during any such use, including, but not limited to, requesting *in camera* proceedings. The terms of this Protective Order do not preclude, limit, restrict, or otherwise apply to the use of documents at trial. The parties agree to meet and confer in good faith prior to trial to establish procedures for the use of Confidential Material at trial.

18. ***Improper Disclosure of Confidential Materials.*** If any Confidential Material is disclosed to any person to whom such disclosure is not authorized by this Protective Order, or other than in a manner authorized by this Protective Order, the party responsible for the disclosure shall, upon discovery of the disclosure, immediately inform the Designating Party of all facts pertinent to the disclosure that, after due diligence and prompt investigation, are known

to the party responsible for the disclosure (including the name, address, telephone number, and employer of the person to whom the disclosure was made), shall immediately take all reasonable efforts to prevent further disclosure by each unauthorized person who received such information, and shall immediately require each unauthorized person to return all Confidential Material that was improperly disclosed to that person, all copies made of the improperly disclosed Confidential Material, and all documents containing excerpts from or references to the improperly disclosed Confidential Material.

19. ***No Admissions.*** Compliance with this Protective Order in no way constitutes an admission by any party that any information designated pursuant to this Protective Order is or is not proprietary, confidential, or a trade secret.

20. ***Modification of Protective Order.*** Each party reserves the right to request that the Court modify the terms of this Protective Order in the event that the party believes that a modification is necessary. If such an application is made, all signatories of copies of the Certification, as well as persons described herein, shall remain bound by this Protective Order unless and until it is modified by the Court.

Respectfully submitted,

HARRIS, DOWELL, FISHER & HARRIS, L.C.

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and Counterclaim Plaintiffs

IT IS SO ORDERED.

Dated: 12/21/10

Terry I. Adelman
Hon. Terry I. Adelman
United States District Court, E.D.Mo.